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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St. S.W.
Room 10276
Washington, DC 20410-0500

Re: Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard; Docket No. FR-6272-P-01

The National Low Income Housing Coalition (NLIHC) is dedicated to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on housing policy and funding improvements for extremely low-income people who receive and those who need assistance.

NLIHC leads the Disaster Housing Recovery Coalition (DHRC) of more than 850 national, state, and local organizations, including many working directly with disaster-impacted communities and with first-hand experience recovering after disasters. The DHRC works to ensure that federal disaster recovery efforts reach all the lowest-income and most marginalized survivors.

NLIHC also convenes the Housing Recovery Research Consortium, consisting of researchers from academia, research centers, and non-profit housing organizations who come together to improve access to high-quality data, identify research questions relevant to effective and equitable disaster response and recovery, and disseminate research and best practices on housing for marginalized populations.

NLIHC applauds the U.S. Department of Housing and Urban Development's (HUD) release of its Federal Flood Risk Management Standards (FFRMS). These important, scientifically based standards detail how affordable housing can avoid or be made resilient against the impact of flood events, which are increasing in frequency and severity due to climate change. We hope, however, that HUD can do more to ensure that low-income households are protected.

Through the work of the DHRC, we have seen the devastating impacts of flooding on households with low incomes and other historically marginalized communities. The country's broken disaster housing recovery system is either inaccessible for these disaster-impacted households or provides only token funds to assist families in recovering afterward. As a result, many disaster-impact households find themselves under the real threat of permanent displacement from their communities, and at worst, homelessness.

These outcomes are not inevitable. Constructing affordable housing outside of areas at risk of flooding is an easy way to mitigate the impact of flooding, and implementing mitigation and floodproofing measures would limit the extent of flood damage on the households most vulnerable to the impact of hazards.

Current Situation

Data on federally assisted housing and hazard risk show that public housing experiences higher risk from hazards in general and flooding in particular. In 2021, NLIHC and the Public and Affordable Housing Research Corporation (PAHRC) reviewed the hazard risk profiles of every federally assisted rental unit in the country using FEMA risk data. The report, *Taking Stock: Natural Hazards and Federally Assisted Housing*, found that more than 1.5 million federally assisted housing units, or 32% of the assisted stock, are at very high or relatively high risk of a negative impact from natural hazards. In comparison, only 24% of renter occupied homes and just 14% of owner-occupied homes met that same criterion. When looking only at riverine flooding, the report found that 16% of the federally assisted housing stock, or 821,325 units, were at high or relatively high risk of flooding. More than half of those – 10% of all federally assisted housing stock – were in 100- or 500-year floodplains or regulatory floodways.

Table: Federally Assisted Rental Homes' Risk and Potential Exposure to Riverine Flooding

Sited in location that is...	Number of Units	Percent of Units
Very high or relatively high riverine flooding hazard risk rating (NRI)	821,325	16%
in the 100 year floodplain or a Regulatory Floodway	224,608	5%
in the 500 year floodplain	241,525	5%

PAHRC & NLIHC tabulation of NHPD, retrieved 2020, matched to NFHL (2020) and the National Risk Index (2020).

Table taken from NLIHC and PAHRC's Taking Stock Report

It is important to note, however, that due to underestimates within FEMA's 100-year flood hazard measurements, the number of assisted housing units within those areas is likely far larger. An analysis by First Street found that the number of overall properties at substantial risk of flooding was 1.7 times the number provided by FEMA. This disparity is why we support HUD's Climate Informed Science Approach (CISA).

The number of properties at high risk of negative impacts from flooding takes on added importance in the context of the national shortage of deeply affordable, accessible housing. Nationally, there is a shortage of 7.3 million rental homes affordable and available to the lowest-income people. For every 10 extremely low-income households, there are fewer than four homes affordable and available to them. The private market cannot build and operate housing affordable to people with the lowest incomes, so government intervention in the form of subsidies is necessary to fill the gap between what the lowest-income people can afford to pay and the costs of developing and operating rental homes.

Congress has consistently underfunded housing subsidies, however, such that only one in four households eligible for housing assistance receives any. Consequently, millions of families are placed on

waitlists for housing assistance, with many facing homelessness or overcrowding while they wait. Congress has also divested from public housing for decades, resulting in the accrual of over \$70 billion in unmet capital backlog needs. Our nation now loses 10,000 to 15,000 units of public housing every year to obsolescence or decay, while other units continue to fall into deep disrepair. This divestment leaves public housing residents routinely exposed to dangerous living conditions and health hazards, including lead, carbon monoxide, mold, asbestos, radon, and pests. Only sustained and significant federal investments in rental housing can ensure that the lowest income renters have safe, accessible, affordable homes.

In addition to the federal government's disinvestment in deeply affordable housing, there is also a severe lack of disaster housing recovery resources. While FEMA Public Assistance can be used to assist in the recovery of Public Housing Authorities (PHAs) and other non-profit housing providers, funding is limited in eligibility. HUD does maintain an Emergency Capital Fund, which can be made available to PHAs following a disaster, but available funds are limited and distributed on a first-come-first-served basis. While HUD's Community Development Block Grant – Disaster Recovery (CDBG-DR) funds are also available for repair and recovery work, the variety of uses of CDBG-DR commonly result in competition with non-housing-related uses, which can result in underinvestment in affordable housing repair, reconstruction, and new construction within impacted areas. To the extent CDBG-DR is used to address housing needs, homeowners are routinely favored over renters, who are more likely to have lower incomes.

New Development Within Floodplains Must be Curtailed By HUD

Based on data and available funding discussed above, it is pivotal that HUD's FFRMS better ensure that new federally supported housing is not constructed in high-risk areas such as floodplains. The use of the new FFRMS standard should allow HUD to better identify and predict the risk of flooding to HUD-funded projects in the near- and long-term, something which we applaud. New construction in floodplains, however, even with the requirement that the administrative steps of § 55.20 be completed and that flood proofing and mitigation measures be adopted to address the risk of flooding, will waste precious HUD resources, and continue to endanger the lives of households with low incomes.

New construction that would be impacted by flooding and require funds for rehabilitation and repair – likely more than once – should be avoided. The use of scarce HUD funding, including post-disaster funding available via the CDBG-DR program, to continually repair additional federally assisted units will impact the nation's ability to respond to the housing crisis. The oft-quoted figure from the National Institute of Building Sciences states \$1 spent on mitigation saves \$6 in other expenses, but by disallowing or severely limiting construction of new units in floodplains, HUD can avoid spending the \$1 at all.

The placement of affordable housing units in areas more likely to be impacted by hazards like flooding is often the direct result of overt and unwritten exclusionary policies seeking to marginalize individuals with lower incomes and people of color. By allowing the trend to continue, HUD is permitting local and state governments to continue the practice of placing those with the lowest incomes in areas of the greatest risk. Even with an eight-step process for the creation of new housing within floodplains, states and municipalities that have for years constructed affordable housing in these dangerous locations may not change their behavior. HUD should avoid allowing these historical trends to continue and ensure that housing for the lowest-income families is not placed in flood zones at all. Instead, HUD should work

with its state and local partners and stakeholders to reverse these practices. In recognition of this history, HUD should work to prevent new construction from occurring in flood plains, or at the very least, HUD should consider the legacy of affordable housing placement within a community when evaluating the location of housing in a floodplain under the eight-step process described in § 55.20.

While the eight-step decision making process described in the new Section § 55.20 does require the use of floodproofing and improved elevation standards, households with low incomes are negatively impacted by flooding even if all mitigation and floodproofing measures are taken. Flooding damage takes a variety of forms, through direct impacts such as the destruction of vehicles and personal property or indirectly by toxins spread by floodwaters, disruption of employment, or interfering with access to healthcare. As a result, even if a housing unit is not directly damaged by floodwaters, households with low incomes can experience significant negative impacts from flooding and will be less likely to recover afterward. Given FEMA's recent shift towards lessening deployment to so-called "smaller disasters" such as flooding less and less, the assistance typically in-place for these households to replace personal property will be largely absent. Without available assistance, the lives of residents will continue to be significantly impacted if their homes are being built in flood zones, even with the floodproofing and mitigation steps needed to prevent flooding from damaging units.

While the creation of new housing units within floodplains should be curtailed, the use of HUD funding to repair, rehabilitate, and improve the resilience of existing subsidized units already within these areas must be protected. Regardless of the impact of climate change, the residents of these communities will continue to possess a right of return consistent with human rights law that must be honored, will continue to remain in at-risk areas, and should be provided assistance in recovering after disasters via HUD funding like CDBG-DR to prevent their post-disaster displacement. In areas such as Puerto Rico, where entire communities exist in flood plains, HUD assistance remains a vital tool for recovery and to mitigate the potential hazards of living in these high-risk areas. We applaud HUD for ensuring that this can occur without significant administrative burden.

In addition, we recommend that HUD quickly work to provide interactive mapping and data to reflect these updates flood maps, ensuring that communities and their representatives can quickly integrate these new standards into their planning processes. HUD should aspire to the level of data and interactive tools available for FEMA-related flood plain management upon final approval of this rule.

HUD Should Ensure that New Construction is not Conducted in Wetlands

In addition to preventing new construction in floodplains, HUD should also prevent new construction in wetlands. While new construction within wetlands under the new FFRMS rules would also be subject to the eight-step decision making process of § 55.20, the importance of wetlands in lessening the impact of both riverine and coastal flooding should spur HUD to take additional steps to prevent new construction within them.

Wetlands serve as an important natural mitigation feature against riverine flooding, helping lessen the impact of flooding. A one-acre wetland can typically store about three-acre feet of water, or one million gallons. Trees and other wetland vegetation also help slow the speed of flood waters. The combination of low-maintenance mitigation and the preservation of important habitat for flora and fauna make their conservation exceedingly important to combating the impacts of climate change on both the built and natural environment. By permitting new development within floodplains, HUD would encourage further

destruction of these important features, worsening flooding for surrounding areas, increasing the likelihood of flood damage to buildings, and actively compounding the impacts of climate change.

Coastal wetlands also serve an important role in lessening the impact of hurricanes and other powerful storms. Coastal wetlands serve as storm surge protectors when hurricanes or tropical storms come ashore, preventing land and property from being exposed to their full destructive energy. In addition, coastal wetlands are often viewed as cultural resources by the communities that inhabit surrounding areas and who view the continued encroachment of development into these areas as a destruction of their heritage. By permitting new construction in these coastal wetlands, HUD is encouraging further growth within them, making the impact of coastal storms more severe and destroying or curtailing important cultural heritages and practices.

Conclusion

HUD's adoption of the new FFRMS is laudable. These standards are forward looking, climate science-informed, and signify a step by HUD in acknowledging the need to ensure that households with low incomes are protected against the impacts of climate change. HUD should do more, however, to ensure new construction does not occur in flood plains or wetlands. By doing so HUD, can lessen the impact of riverine and coastal flooding, ensure households with low incomes are not placed in harm's way and are not subjected to long, painful disaster recoveries, stop legacies of exclusionary planning practices, and ensure scarce financial resources are not spent on unnecessary resilience and mitigation activities.

For more information, please contact NLIHC Senior Policy Analyst for Disaster Recovery Noah Patton at npatton@nlihc.org.